

INTRODUCTORY PROVISIONS

§304.1. Applicability.

The provisions of this chapter are applicable to each water division created by the commission pursuant to the Texas Water Code, §11.325, outside of the Rio Grande Water Division, and to all water rights and matters related to water rights within each such water division. Water rights and matters inside the Rio Grande Water Division are governed by Chapter 303 of this title (relating to Operation of the Rio Grande). All other rules promulgated by the commission are also applicable to the water rights subject to this chapter unless in conflict with the provisions of this chapter, in which event the provisions of this chapter shall govern.

§304.2. Appointment of Watermaster.

The executive director may appoint one watermaster for each water division, or the same person may be appointed watermaster for two or more water divisions. In a water division in which the office of watermaster is vacant, the executive director has the powers of a watermaster.

§304.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Account - The record of diversion and use of state water maintained by the watermaster for each purpose of use authorized for each owner's separate portion of a water right, or the record of impoundment and releases for each owner's separate portion of an on-channel reservoir authorized under a water right, except those reservoirs exempted in accordance with the Texas Water Code, §11.142. An account will also be established for each separate arrangement by a contractual buyer to purchase state water.

Agent - A person who wishes to act in behalf of a water right holder in regard to diversion use, impoundment of state water, payment of a watermaster assessment, or, for a contractual buyer, in regard to diversion, use, or impoundment of state water.

Allocation - The division of available flow between water right holders by the watermaster. This also includes regulation of diversions by water right holders in order to meet demands for exempt domestic and livestock users.

Assessment - The cost to be levied by the commission to water right holders to finance watermaster operations.

Contractual buyer - A person who impounds or diverts water under a contractual permit, or under a particular water right pursuant to a contract with the holder of that water right, where such contract has been accepted for filing by the executive director.

Declaration of intent - A statement submitted by a diverter to the watermaster describing an intent under a specific water right or contractual purchase arrangement to divert water, or to make a dedicated release of stored water, for a specified period of time and in association with an authorized facility.

Dedicated release - The release of lawfully stored water from a reservoir, under a specific water right, for specific authorized uses downstream.

Diversion facility - Any dam, pump, canal or other such device used to take water, for other than exempt uses, from a watercourse or impoundment.

Diverter - Any water right holder, agent, or contractual buyer who impounds, takes, diverts, or makes a dedicated release of state water.

Measuring device - A device designed for the measurement of rates of flow and/or quantities of water.

Report of diversion, release, or impoundment - A report which the diverter is required to submit to the watermaster after recording the amount of water actually diverted or released during the period of a declaration of intent, or a report for the impoundment of water, as well as any additional information required by the watermaster. The watermaster may specify a report period that is different from the declaration of intent period.

Return flow - The entry into a stream or reservoir of water following its use for municipal, industrial, irrigation or other purposes.

Salt water diversion - Diversion of state water from the Gulf of Mexico or its bays and arms, or any watercourse or reservoir subject to tidal influence, or when the water right specifies diversion of salt or brackish water; and where, for such cases, the diversion has no significant adverse effect on the supply of water for other authorized diverters, and the diversion does not require protection from junior appropriators.

Water division - A specific area of the state, designated by the commission pursuant to the Texas Water Code, §11.325, for the purpose of administering water rights.

Watermaster - The person appointed by the executive director pursuant to the Texas Water Code, §11.326(a), to administer water rights in a given water division or group of water divisions.

Water right - A right acquired under the laws of the state and the rules of the Texas Water Commission to impound, divert, and/or use state water. Contractual permits and water contracts are not included under this definition.

Water right holder - A person or entity who owns a water right. In the case of divided interests, this term will apply to each separate owner.

REGULATION OF THE USE OF STATE WATER

§304.11. Difference in Operations.

The executive director may establish different strategies, timetables, procedures and other requirements for different water divisions or for different portions of a water division.

§304.12. Identification of Diversion Facilities, Outlet Works and Points of Return.

Each diverter shall advise the watermaster of all diversion facilities, reservoir controlling works, and significant return flow points to be employed in the use of state water. This includes borrowed and rented pumps. The watermaster shall assign an identification number for each diversion facility and the controlling works of each reservoir authorized under a water right within the water division. Also, the watermaster may assign an identification number for any point of discharge or other point at which water is returned to a watercourse or reservoir.

§304.13. Requirement for Measuring Devices.

(a) Each diverter, and each person who makes a significant return flow, shall install and maintain a measuring device at such point or points as may be determined by the watermaster to be necessary for proper and efficient administration of water rights. All such measuring devices shall be subject to approval of the watermaster. The measuring devices shall measure within five percent accuracy, unless otherwise approved by the watermaster. The diverter shall provide reasonable access to such measuring device. The diverter, or person who makes a return flow, shall be liable for all expenses incurred in the acquisition, installation, maintenance and operation of such measuring devices. In the event a measuring device becomes inoperable, the diverter, or person who makes a return flow, at the direction of the watermaster, shall provide an alternate method of measurement, or estimation acceptable to the watermaster.

(b) Unless required by a permit, certificate of adjudication, or other water right, the following types of diversions and return flows associated with such diversions shall be exempt from the requirement to install and maintain measuring devices; provided, however that the watermaster may require any such diverter, or any person making return flows, to provide an alternate method of estimating diversions or return flows acceptable to the watermaster:

- (1) diversions of water by spreader dams;
- (2) diversions of water for hydroelectric generation;
- (3) salt water diversions;
- (4) diversions of water for direct input from a cooling pond and/or cooling reservoir into an electric steam power plant for cooling purposes and return flows of such water to a cooling pond;
- (5) wastewater effluent for which the return flow is being measured and reported in a manner consistent with commission standards relative to wastewater discharge regulations; and

- (6) any other diversion or return flow of water that the watermaster may deem appropriate.

§304.14. Requirement for Outlets for Passage of Water.

The owner of any works for the diversion or storage of water shall maintain a substantial headgate at the point of diversion, or a gate on each discharge pipe of a pumping plant, constructed so that it can be located at the proper place by the watermaster, or a suitable outlet in a dam to allow the free passage of water that the owner of the dam is not entitled to divert or impound.

§304.15. Declarations of Intent to Divert or Release Water.

(a) Prior to diverting state water or making a dedicated release, a diverter shall submit to the watermaster a declaration expressing the diverter's intent in regard to the anticipated diversion or release. Such a declaration of intent must be submitted within the time limitations established by the watermaster. Each diverter shall divert or release water only in accordance with the statements in the declaration of intent.

(b) Each declaration of intent to divert water shall identify the specific account under which water is to be diverted; the amount of water to be diverted; a schedule for the diversions; the diversion facility to be used; and the rate at which water will be diverted. Diversion shall only be made using authorized facilities, or at points associated with the water right under which the diversion is to be made. Use of water under an irrigation water right shall be only for use on the tract(s) authorized by the water right.

(c) Each declaration of intent to make dedicated releases for downstream uses shall identify the specific account(s) under which water is to be released; the schedule of releases; the amount of water to be released; the specific account(s) under which the water is to be used; the actual rate at which water will be released; and the identification and location of the user. Dedicated releases will be protected only if the preceding data is provided. Dedicated releases shall only be diverted at points authorized by the water right under which the release is made, or an associated approved water contract.

(d) In regard to declarations of intent under either subsection (b) or (c) of this section, the watermaster may require any diverter to provide such additional information as may be necessary for the proper and efficient administration of water rights.

(e) The watermaster shall establish the duration of time for which declarations of intent will remain in effect and may change the duration as conditions warrant. After the end of the duration of a declaration of intent, no further diversion or release of state water shall be made under that account until a new declaration of intent has been submitted to the watermaster.

(f) A diverter may modify a declaration of intent in regard to the duration, the amount of water to be diverted, the diversion rate, or other specific elements in advance of the desired change.

(g) The watermaster from time to time may determine that it is necessary for the proper and efficient administration of water rights that diversions, impoundments of inflows, or releases of dedicated flow in certain areas, or by certain diverters, may not be made without prior approval by the watermaster. Any such determination shall be effective for the period designated by the watermaster.

(h) Salt water diversions and the recirculation of water at a power plant are exempted from any requirements under this section. The watermaster may also exempt any other facility or water right from any requirement under this section due to extenuating circumstances.

§304.16. Records of Diversions, Releases, and Impoundments.

(a) Each diverter who has submitted a declaration of intent shall submit to the watermaster a report including the actual amount of water diverted or released during the period of the subject declaration of intent. Water right owners with accounts for impoundment will submit reports of daily inflows, reservoir levels, diversions, and releases to the watermaster. The watermaster may specify a report period. The report period may be different from the period of the declaration of intent. The watermaster shall provide forms to be used for the reports. Each diversion or impoundment facility, including borrowed and rented pumps, used during the period of the declaration of intent shall be designated on the report by the identification number assigned by the watermaster. Reports must be complete and signed by the diverter. Reports must be received or postmarked within seven days from the termination of the period of the declaration of intent, or other report period specified by the watermaster. If such report is incomplete or not timely filed, the watermaster may cancel any existing declaration of intent for that account and allow no further impoundment, diversion or dedicated release until the report is properly filed.

(b) To the extent that water was available for diversion during the period of a declaration of intent, the subject account will be charged as follows.

(1) If the actual diversion is within 10% of the amount stated in the declaration of intent, the charge will be the actual amount diverted.

(2) If the actual diversion is greater than 110% of the amount stated in the declaration of intent, the charge will be the amount actually diverted plus twice the amount greater than 110%.

(3) If the actual diversion is less than 90% of the amount stated in the declaration of intent, the charge will be 90% of the stated amount.

(4) For a declaration of intent that was modified, including cancellation or extension, the charge will consist of the sum of two parts, one for the period before modification, and one for the period after modification. For each of the two periods, the charge will be determined by applying paragraph (1), (2), or (3) of this subsection relative to the amount declared for the particular period. If a modified declaration of intent is subsequently modified further, resulting in multiple parts, the procedure described in this subsection will be applied to each part.

(c) Any amount charged under subsection (b) of this section will apply against the yearly authorization, but only the amount of water actually diverted will apply toward perfection of a water right.

(d) The watermaster shall have the discretion to waive the accounting provisions contained in subsections (b) and (c) of this section for excessive or inadequate diversions due to circumstances beyond the control of the diverter.

(e) In addition to the report to be submitted to the watermaster pursuant to subsection (a) of this section, each water right holder or his agent shall submit to the executive director a written report of the amount of water actually diverted and used during the preceding calendar year under a specific water right in accordance with §295.202 of this title (relating to Reports). This report is required even if no water is used. The form for this report can either be one furnished by the executive director, or be a form approved by the executive director prior to the submission of the report.

ALLOCATION OF WATERS

§304.21. Allocation of Available Waters.

(a) The allocation of water between water rights holders shall be on the basis of seniority, which may be modified as provided in subsection (b) of this section. The watermaster shall allocate waters in such a way as to maximize the beneficial utilization of state water, to minimize the potential impairment of senior water rights by the diversions of junior water rights holders, and to prevent waste or use in excess of quantities to which the holders of water rights are lawfully entitled.

(b) In administering water rights, the watermaster shall take into account any exceptions to the priority system as directed by the commission relative to the Wagstaff Act, Texas Water Code, §11.028.

(c) The executive director may request suspension of any or all special streamflow or minimum release requirements. Such a request shall be considered under §297.61 of this title (relating to Amendments by Executive Director).

(d) When available flow is not sufficient to meet the demands of existing declarations of intent for downstream senior rights, demands for domestic and livestock purposes that are not included under any water right, or other minimum streamflow requirements that the commission determines necessary for purposes other than protection of downstream senior and superior water rights, the watermaster may:

(1) cancel or modify, as needed, any existing declaration of intent made pursuant to §304.15 of this title (relating to Declarations of Intent to Divert, or Release Water);

(2) order that water right holders with reservoir(s) allow inflows to pass through such reservoir(s) to the extent necessary to honor downstream senior water rights, demands for domestic and livestock purposes, minimum streamflow requirements, minimum release requirements, and other conditions;

(3) order that diverters limit or cease diversions to the extent necessary to honor downstream senior water rights, demands for domestic and livestock purposes, minimum streamflow requirements, minimum release requirements, and other conditions; and/or

(4) take any other action necessary to ensure that downstream senior water rights, demands for domestic and livestock purposes, minimum streamflow requirements, minimum release requirements, and other conditions, are administered in accordance with the laws of Texas.

ENFORCEMENT REGARDING WATERMASTER OPERATIONS

§304.31. General.

The watermaster or executive director may pursue appropriate enforcement action when there is a violation of the Texas Water Code, the terms of a water right, or a commission order or rules.

§304.32. Violations.

(a) It shall be a violation for any person to do the following:

(1) divert, use, or make a dedicated release of state water, either personally or through another, without proper authorization under the Texas Water Code or any applicable final judgment rendered by a court of competent jurisdiction, or without submitting to the watermaster a declaration of intent in accordance with §304.15(a) or (g) of this title (relating to Declarations of Intent to Divert or Release Water);

(2) impound without proper authorization under the Texas Water Code or any applicable final judgment rendered by a court of competent jurisdiction;

(3) fail to modify a declaration of intent in advance of a desired change as provided in §304.15(f) of this title (relating to Declarations of Intent to Divert, or Release Water);

(4) fail to provide a measuring device as required in §304.13 of this title (relating to Requirement for Measurement Devices);

(5) fail to provide an outlet as required in §304.14 of this title (relating to Requirement for Outlets for Passage of Water);

(6) refuse to allow, or to interfere with, the inspection of any land, natural watercourse, artificial waterway, impoundment, return flow point, or diversion facility by an employee of the commission that would assist the commission in the discharge of its duties;

(7) break, tamper with, or mutilate any seal or other device used to enforce orders of the commission, executive director, court, or watermaster; or

(8) fail to comply with any statute, rule or order of the commission.

(b) The list of violations in subsection (a) of this section is not exclusive.

§304.33. Enforcement Actions.

When a violation under §304.32 of this title (relating to Violations) occurs, the watermaster or the executive director may seek voluntary compliance, or may pursue appropriate enforcement action. In the absence of voluntary compliance:

(1) The watermaster may refuse to recognize a declaration of intent;

(2) The watermaster may lock headgates or pumping facilities or take other necessary actions to effectively cease diversion, impoundment or release of state water under the account associated with the violation; provided, however, that for violations of §304.32(a)(4) or (a)(5) of this title (relating to Violations), the diverter shall be given at least 10 days notice prior to any such action by the watermaster;

(3) The executive director may seek a hearing before the commission culminating with the issuance of an appropriate order; if such an order is subsequently violated, the matter may be referred to the attorney general for appropriate action in a court of competent jurisdiction;

(4) The executive director may refer the violation to the attorney general for appropriate legal remedy in a court of competent jurisdiction, which may include a penalty assessment to the maximum extent allowed by law; and/or

(5) The executive director may seek any other appropriate remedies or action available at law.

ADMINISTRATION

§304.41. Emergency Actions.

The watermaster may take any reasonable action appropriate to alleviate emergencies.

§304.42. Reports.

The watermaster shall submit a quarterly report to each water right holder or his agent who has a diversion account. A water right holder or agent may apply in writing to the watermaster for correction of any alleged errors in the report. Any such application must be received by the watermaster within 20 business days following the date the report from the watermaster was postmarked.

§304.43. Ownership.

When a water right is sold or otherwise transferred the new owner shall promptly inform the executive director of the change of ownership and shall provide the appropriate ownership documents. If a tract of land to which a smaller water right acreage is appurtenant is owned by more than one person in divided interest, the executive director may administratively divide the water right among the owners on a pro rata basis by acreage. If the new ownership record is not complete, the executive director shall inform the alleged owner by letter that ownership documents must be filed within 30 days and approved by the executive director. During a 60-day period following the date of the executive director's letter, the watermaster will honor declarations of intent by the alleged owner in accordance with the water right. After the 60-day period, no declaration of intent will be honored until the executive director notifies the watermaster of the approved change in ownership. Requests for extension for the initial 60-day period must be submitted in writing to the executive director at least five business days prior to the end of the 60-day period. If the extension is granted, the watermaster may honor declarations of intent for the alleged owner; otherwise no declaration of intent from the unverified owner will be honored.

§304.44. Appointment of an Agent.

Any person purporting to act for any water right holder, in regard to diversion, use, or impoundment of state water, or payment of a watermaster assessment, or for a contractual buyer, in regard to diversion, use, or impoundment of state water, shall submit to the watermaster a document signed by such water right holder confirming such authority and specifying the duration of such authority.

APPEAL OF WATERMASTER ACTIONS

§304.51. Appeal of Watermaster Actions.

Any person dissatisfied with any action of the watermaster may apply to the executive director for relief under the Texas Water Code, §11.326.

FINANCING WATERMASTER OPERATIONS

§304.61. Costs of Administration.

In accordance with the Texas Water Code, §11.329, all holders of water rights that are administered by a watermaster shall reimburse the commission for the expenses of watermaster operations. An assessment account shall be established for each water right holder for each water right authorization by category of use. The total assessment for each assessment account shall be the sum of a uniform base charge and, as applicable for that assessment account, either a use fee or a storage fee, or both. The executive director shall file with the commission a copy of the proposed budget. Following a public hearing, the commission shall issue an order for each water division or group of water divisions, as the commission may determine to be appropriate, approving the assessment income needed for the watermaster operations for the assessment period under consideration. The order shall also specify the base charge per assessment account and the reinstatement fee for delinquent assessment payment.

§304.62. Determination of Assessment Rates.

(a) After a commission order is issued approving the assessment income needed for the watermaster operations for the assessment period under consideration, the executive director shall calculate assessment rates for water use and storage for each water division, or group of divisions, based on the following formula.

$$\text{Municipal Assessment Rate} = \frac{I - M(N)}{(RF_s)(AF_s) + (AF_1) + (RF_2)(AF_2) + (RF_3)(AF_3) \dots (RF_n)(AF_n)}$$

I : Income needed to meet the adopted budget
M : Base charge per account
N : Total number of accounts to be assessed in the water division
n, s : Code number corresponding to a category or type of use
RF_n, RF_s : Rate factor for each of the following categories of use:

municipal	RF ₁ = 1.00
industrial - consumptive	RF ₂ = 1.00
irrigation	RF ₃ = 0.80
mining - consumptive	RF ₄ = 1.00
recreation - consumptive	RF ₅ = 1.00
non - consumptive (industrial mining recreation)	RF ₆ = 0.20
hydroelectric - priority	RF ₇ = 0.20
hydroelectric - non-priority	RF ₈ = 0.05
recharge for underground storage	RF ₉ = 0.50
salt water	RF ₁₀ = 0.05
spreader dam diversion	RF ₁₁ = 0.40
secondary use	RF ₁₂ = 0.50
on-channel storage	RF _s = 0.40

AF_n , AF_n : Total diversion, or storage, authorization for all water rights to be assessed in each water division or group of water divisions, for each of the above categories of use, which are defined as follows:

Municipal - The total amount of water authorized for diversion under a water right for this purpose, including non-exempt domestic and livestock uses;

Industrial, Mining, Recreation, or Salt Water Diversions - The total amount of water authorized for consumptive use for each of these categories of use under a water right. In the event there is no specific authorization for consumptive use, the assessment shall be based on the total amount of water authorized for diversion under the water right. Diversions that do not conform to the definition for salt water diversion in §304.4 of this title (relating to Definitions) will be assessed at the rate for the category of use(s) authorized by the water right. For any diversion that would fit the salt water diversion definition except for the fact that the watermaster may be required to protect that water right against junior appropriators, the water right holder or agent may achieve conformity with the definition, and be assessed at the salt water rate, by providing to the executive director, at least 60 days in advance of assessment billing, an affidavit waiving such protection. Such an affidavit shall be subject to approval by the executive director and shall specify the duration for waiving such protection, but shall not be for less than one assessment accounting period, and shall be coterminous with assessment periods as establish by the commission.

Nonconsumptive Industrial, Mining, or Recreation - under a given water right where part of the authorization for one of these uses is specified as being consumptive, the remainder will be considered nonconsumptive.

Irrigation, Hydroelectric (Priority and Non-priority), Recharge, Spreader Dam Diversions, or Secondary Use - the total amount of water authorized for diversion for each of these categories of use under a water right.

On-channel Storage - the total conservation storage authorized for impoundment under a water right. This category includes only on-channel reservoirs authorized under the Texas Water Code, except those reservoirs exempted in accordance with the Texas Water Code, §11.142.

(b) After the assessment rate for municipal use has been determined, the assessment rates for the other uses or for storage shall be calculated as the mathematical product of the municipal assessment rate and the rate factor for each use or for storage.

§304.63. Assessment of Costs.

(a) To determine the amount of assessment for each assessment account, computations shall be made by adding together a base charge as specified in the commission order adopted in accordance with §304.61 of this title (relating to Costs of Administration) and, as applicable, either or both of the following:

(1) a use fee, which is the mathematical product of the total amount of water authorized for use under that assessment account and the appropriate assessment rate as determined by §304.62 of this title (relating to Determination of Assessment Rates); provided, however, that if the water right authorizes more than one type of use, and if the maximum amount of water authorized to be used annually for all uses (the maximum total authorization) is less than the sum of the maximum amounts authorized to be used annually for each use (the sum of all authorizations), then, in calculating the fee for each account the number to be

used for the authorized amount shall be the product of the maximum total authorization and a fraction whose numerator is the amount of water authorized for that use, and whose denominator is the sum of all authorizations; and also provided that the water right holder or the executive director may apply to the commission for, and the commission may grant, an order providing, for assessment purposes only, that different portions of the total amount of water authorized be applied to the various authorized uses; and

(2) a storage fee for on-channel storage, which is calculated by multiplying the total amount of water authorized for conservation storage under that assessment account by the storage assessment rate as determined by §304.62 of this title (relating to Determination of Assessment Rates). For any water right authorizing storage and more than one type of use for the same owner, the storage fee for that owner's total storage authorization shall be applied to the assessment account for any one of the uses associated with that owner.

(b) The assessment shall be paid to the executive director in advance of expenditures. The executive director shall specify the dates by which payments shall be due, and may provide for payments in installments. Penalties and interest for the late payment of fees shall be assessed in accordance with Chapter 12 of this title (relating to Payment of Fees). If fees are paid in installments, penalties and interest for late payment shall be computed on the amount of the installment due. The executive director shall transmit all collections to the state treasurer to be held in a special fund to provide for the cost of the watermaster operation.

(c) Water shall not be diverted, taken, stored, or used by any diverter or agent while any assessment payment is delinquent.

(d) Either the water right owner or agent shall pay the assessment, but only one person per assessment account shall be authorized to pay assessments.

Adopted January 22, 1997

Effective February 14, 1997